

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

WILLIAM R. ELSON,)	CASE NO. 1:10 CV 1851
)	
Petitioner,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
BRIAN COOK,)	<u>AND ORDER</u>
)	
Respondent.)	

Petitioner pro se William R. Elson, an inmate at the Pickaway Correctional Institution, filed his Amended Petition (the Petition) in the above-captioned habeas corpus action under 28 U.S.C. § 2254 on October 18, 2010. Elson challenges his convictions for attempted kidnapping (4 cts) and criminal child enticement (4 cts). For the reasons stated below, the petition is denied and this action is dismissed.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

Among the grounds set forth in the petition, Elson asserts he was denied the effective assistance of appellate counsel

because counsel failed to notify him of the Ohio Court of Appeals decision affirming his conviction. It is apparent on the face of the petition that Elson has pending Application for Reopening in the Ohio Court of Appeals concerning this very issue. Thus, without regard to the potential merits of the grounds sought to be raised herein, the petition is obviously premature. See, Rose v. Lundy, 455 U.S. 509, 522 (1982).

Accordingly, this action is dismissed without prejudice pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.


DONALD C. NUGENT
UNITED STATES DISTRICT JUDGE